

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

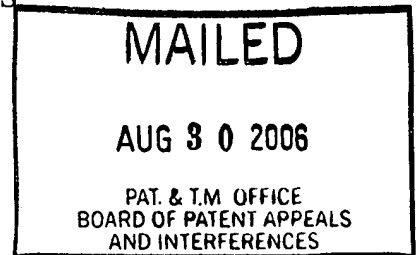
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVE CRAIG BETZ, HERMAN PAUL HAAS
and ALAN FRANKEN

Appeal No. 2006-1549
Application No. 10/033,317

ON BRIEF



Before JERRY SMITH, RUGGIERO, and BLANKENSHIP, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-7, 9-17, 19, and 20, which constitute all the claims pending in this application.

The disclosed invention pertains to a system and method for displaying video-clip previews on demand in an interactive television/broadcast system.

Representative claim 1 is reproduced as follows:

1. An interactive television/broadcast system comprising:

a display screen;

an electronic program guide (EPG) having at least one display window and a grid guide, the grid guide including a plurality of program titled cells displayed on the display screen, wherein the EPG displays a video-clip preview in the at least one display window on demand by automatically launching the video clip preview:

- (1) after browsing and navigating through the grid guide to highlight a program titled cell, and
- (2) after remaining at the highlighted program titled cell for a predetermined delay,

wherein the launching of the video clip preview is inhibited if a program corresponding to the video clip preview and corresponding to the highlighted program titled cell is restricted according to a user profile based parental control.

The examiner relies on the following references:

| | | |
|----------------------------|-----------|-----------------------|
| Rowe et al. (Rowe) | 5,812,123 | Sep. 22, 1998 |
| Bruette et al. (Bruette) | 5,828,419 | Oct. 27, 1998 |
| Schein et al. (Schein) | 6,075,575 | June 13, 2000 |
| Reynolds et al. (Reynolds) | 6,563,515 | May 13, 2003 |
| | | (filed Mar. 04, 1999) |

The examiner cites but does not apply the following references:

| | | |
|------------------------|-----------------|-----------------------|
| Lawler et al. (Lawler) | 5,585,838 | Dec. 17, 1996 |
| Billock | 5,619,249 | Apr. 08, 1997 |
| Namias | US 2002/0112005 | Aug. 15, 2002 |
| | | (filed Aug. 25, 1998) |

Claims 1-7, 9-17, 19, and 20 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Schein in view of Bruette with respect to claims 1, 10, 19, and 20, adds Rowe to this combination with respect to claims 2-5 and 11-14, and adds Reynolds to the second combination with respect to claims 6, 7, 9, and 15-17.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in the claims on appeal. Accordingly, we affirm.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). The examiner must articulate reasons for the examiner's decision. In re Lee, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). In particular, the examiner must show that there is a teaching, motivation, or suggestion of a motivation to combine references relied on as evidence of obviousness. Id. at 1343, 61 USPQ2d at 1433-34. The examiner cannot simply reach conclusions based on the examiner's own understanding or experience - or on his or her assessment of what would be basic knowledge or common sense. Rather, the examiner must point to some concrete evidence in the record in support of these findings. In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Thus the examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the examiner's conclusion. However, a suggestion, teaching, or motivation to combine the relevant prior

art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. In re Kahn, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (citing In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000)). See also In re Thrift, 298 F.3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

We consider first the rejection of claims 1, 10, 19, and 20 based on Schein and Bruette. The examiner essentially finds that Schein teaches all the features of independent claims 1 and 10 except for the recitation that the launching of the video clip is inhibited if a program corresponding to the video clip preview and corresponding to the highlighted program titled cell is restricted according to a user profile based parental control. The examiner cites Bruette as teaching a video program guide that restricts program viewing based on a parental control profile. The examiner finds that it would have been obvious to the artisan to modify the program guide of Schein to inhibit the video clip viewing when the content of the program is prohibited for viewing [answer, pages 3-5].

After noting the individual deficiencies of Schein and Bruette, appellants argue that Bruette teaches inhibiting the viewing of actual video program data as opposed to video clip data as claimed. Appellants assert, therefore, that it would not have been obvious to the artisan to restrict preview video data in view of the lock icon taught by Bruette. Appellants also argue that there is no motivation to combine the system of Schein with the system of Bruette because they are concerned with unrelated objectives and provide unrelated solutions to the respective objectives. Appellants argue that the proposed combination of references fails to teach inhibiting the video clip preview in the manner claimed [brief, pages 6-11].

The examiner responds that it would have been obvious to the artisan that when a video program is restricted for viewing that any information related to that program should also be restricted for viewing. As an example, the examiner notes that a parental restriction on a triple X rated adult program should necessarily also restrict any video preview or substantial information that reveals the content or nature of the program [answer, pages 8-11].

Appellants respond that the suggestion in Bruette of removing restricted programs from the program guide would make it impossible to perform the claimed invention because the highlighted program cell would be eliminated from the program guide in Schein [reply brief, pages 4-5].

We will sustain the examiner's rejection of claims 1, 10, 19, and 20. As noted by the examiner, Schein essentially teaches every feature of the claimed invention except for the inhibition in launching the video clip as claimed. Although the background information in Bruette describes an embodiment in which restricted programs are deleted from the program guide, Bruette also teaches an embodiment in which restricted programs are listed in the guide with an icon to indicate that the program is restricted. Since Schein is aware of parental controls as well [see Figures 6B and 6C], it would have been obvious to the artisan to indicate restricted programs in Schein with an icon as taught by Bruette. Although these collective teachings of Schein and Bruette would inhibit the viewing of actual program content, there is no explicit disclosure of inhibiting any preview clips as well. The examiner, however, has made a persuasive argument in

noting that a parent would not want a child to view a preview clip of a program that the child is not permitted to view. The examiner, therefore, explained that it would have been obvious to the artisan to inhibit preview video clips for programs that a child is not permitted to view. We find the logic of this position to be convincing of obviousness. Appellants have not addressed or rebutted this particular argument made by the examiner. Since we find that the examiner has made a persuasive case for the obviousness of the claimed invention, and since appellants' arguments do not persuade us of error in the rejection, we sustain the rejection of the claims.

We now consider the rejection of claims 2-5 and 11-14 based on Schein, Bruette, and Rowe, and the rejection of claims 6, 7, 9, and 15-17 based on Schein, Bruette, Rowe, and Reynolds. The examiner has indicated how the invention of these claims is deemed to be obvious over the teachings of the applied prior art [answer, pages 5-8]. Appellants' only argument with respect to each of these rejections is that Rowe and Reynolds do not overcome the alleged deficiencies in the basic combination of Schein and Bruette [brief, pages 12-15]. Even though appellants did not make any additional substantive arguments with respect to these claims, the examiner cited several additional documents to support findings of Official Notice made in the rejections of these claims [answer, pages 12-13]. Appellants responded that the citation of additional references constituted a new ground of rejection. Appellants argue that the examiner has provided no motivation for adding these additional references to the combination of references discussed above [reply brief, page 6].

We will sustain the examiner's rejection of claims 2-7, 9, and 11-17. Our first observation is that the references cited by the examiner in support of the findings of Official Notice are not applied against the claims and no new ground of rejection has been entered in this case. Our decision with respect to these claims is based on nothing more than the teachings of Schein, Bruette, Rowe, and Reynolds. Since appellants' only argument with respect to the rejections of these claims is that neither Rowe nor Reynolds

overcomes the deficiencies in the basic combination of Schein and Bruette, and since we have found no deficiencies in the rejection of claims 1 and 10, then we sustain the rejections of these claims for the same reasons discussed above with respect to claims 1 and 10.

In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-7, 9-17, 19, and 20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

Jerry Smith
JERRY SMITH

JERRY SMITH
Administrative Patent Judge

Joseph F. Ruggie
JOSEPH F. RUGGIE

JOSEPH F. RUGGIERO
Administrative Patent Judge

Howard B. Mahan

HOWARD B. BLANKENSHIP
Administrative Patent Judge

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APPEALS AND

INTERFERENCES

- Appeal No. 2006-1549
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